

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

In the Matter of the Application of )  
HAWAIIAN ELECTRIC COMPANY, INC. )  
HAWAII ELECTRIC LIGHT COMPANY, INC. )  
For Approval of a Request for )  
Waiver From the Competitive Bidding )  
Framework. )  

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DOCKET NO. 2008-0091

ORDER DENYING HECO COMPANIES' SECOND EXTENSION REQUEST

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DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
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STATE OF HAWAII

PUBLIC UTILITIES  
COMMISSION

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FILED

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By this Order, the commission denies HAWAIIAN ELECTRIC COMPANY, INC. ("HECO") and HAWAII ELECTRIC LIGHT COMPANY, INC.'s ("HELCO") (collectively, "HECO Companies") request for a second extension of time to file a fully executed term sheet for Hamakua Biomass Energy, LLC's ("HBE") biomass energy project ("Project"). Accordingly, the HECO Companies' request for a status conference on the extension request is moot.

## Decision and Order

By Decision and Order, filed on August 8, 2008, in Docket No. 2008-0091, the commission granted the HECO Companies' request for a waiver from the Framework for Competitive Bidding ("Framework") for HBE's Project, provided that a fully executed term sheet for the Project is filed within four months of

the date of the Decision and Order; and provided that documentation supporting the fairness of the price negotiated between HELCO and HBE is included in any application for approval of a power purchase agreement.

B.

First Extension Request

By letter dated and filed on December 4, 2008, the HECO Companies requested, on behalf of the HECO Companies and HBE, "an extension of time not to exceed 45 days, to submit a fully executed term sheet to the Commission." According to the HECO Companies, "the HECO Companies and HBE have not yet been able to reach agreement on all material terms and conditions for a term sheet and do not anticipate being able to submit a fully executed term sheet by the December 8, 2008 deadline set forth in the Decision."

By letter filed on December 9, 2008, the commission granted in part the HECO Companies' extension request and allowed a two-week extension until December 23, 2008. The commission explained:

As discussed in the Decision and Order, the Commission must balance the competing interests of the benefits of the Project against the benefits of competitive bidding. Indeed, this concern is heightened by information recently provided to the Commission that the HBE Project is in direct competition with another biomass energy project proposed by Hu Honua Biomass Energy LLC, as noted in Docket No. 2008-0143. In addition, as set forth in the Decision and Order, the purpose of a waiver is to allow for a more expeditious means of

adding renewable generation to HELCO's grid than competitive bidding. This purpose would be frustrated by allowing the full extension requested by the HECO Companies.<sup>1</sup>

In its letter, the commission stated that "[n]o further extension requests will be granted."<sup>2</sup>

C.

Second Extension Request

By letter filed on December 23, 2008, the HECO Companies request a "conference to discuss the status of the negotiations, outstanding issues and respond to questions from the Commission" as it "may be an appropriate procedural vehicle to determine whether additional time, and if so the amount of time, is reasonable."<sup>3</sup> As set forth in the letter:

The HECO Companies continue to believe that a firm, dispatchable, renewable resource can provide significant benefits to the HELCO system and the State. Accordingly, it is the desire of the HECO Companies to be able to continue negotiations with HBE in an effort to reach agreement on terms that the Commission may determine are fair and in the best interests of HELCO's ratepayers. Indeed, the HECO Companies are encouraged by and appreciate HBE's willingness to propose modified terms in an effort to facilitate an agreement between the

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<sup>1</sup>Letter filed December 9, 2008, from the commission to the HECO Companies, at 1-2.

<sup>2</sup>Id. at 2.

<sup>3</sup>Letter filed on December 23, 2008, from the HECO Companies to the commission, at 2.

parties. Unfortunately, given the timeframe in which the modified terms were received, the press of competing assignments and the fact that key personnel necessary to analyze the data are unavailable due to the holiday season, the HECO Companies have not yet been able to complete evaluation of the data and proposed price modeling submitted late last week. The HECO Companies recognize and understand the Commission's directive that no further extension requests would be granted in this proceeding, however the HECO Companies respectfully submit that approval of a limited period of additional time to obtain clarification of HBE's new terms, negotiate, and evaluate the new terms and information provided by HBE, could be helpful in reaching final agreement on a term sheet.<sup>4</sup>

On December 23, 2008, HBE, which is not a party to this docket, filed comments entirely under seal, which it amended on December 24, 2008. On January 5, 2009, the HECO Companies filed a response to HBE's comments.

## II.

### Discussion

The HECO Companies request a status conference in order to discuss a second extension of the deadline to file a fully executed term sheet for the HBE Project. As the commission denies the second extension request, it also dismisses as moot, the request for a status conference.

HAR § 6-61-23(a)(1) states:

Enlargement. (a) When by this chapter or by notice or by order of the commission, any act is required or allowed to be done at or within a

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<sup>4</sup>Letter filed on December 23, 2008, from the HECO Companies to the commission, at 1-2.

specified time, the commission for good cause shown may at any time, in its discretion:

- (1) With or without motion or notice, order the period enlarged, if written request is made before the expiration of the period originally prescribed or as extended by a previous order[.]

HAR § 6-61-23(a)(1).

As set forth in the Decision and Order filed on August 8, 2008, the commission is "cognizant of the value in requiring the HECO Companies to utilize competitive bidding to acquire new generation resources. With competitive bidding, the commission has some assurance, for example, that the price that the HECO Companies are paying is fair and in the best interest of the ratepayer." The commission has no such assurance in a waiver docket such as this one absent the conditions imposed in the Decision and Order.

Given HELCO and HBE's inability to reach an agreement on a term sheet, especially on the issue of price, in the time frame set forth in the Decision and Order, despite a partial extension, the commission has no choice at this point but to deny a second extension request. A further extension in this instance would frustrate the purpose of a waiver in allowing for a more expeditious means of adding renewable generation to HELCO's grid. This is consistent with the commission's statement in connection with the first extension request that "[n]o further extension requests will be granted" in this docket. Accordingly,

the commission denies any additional request for extension of time, and dismisses as moot the HECO Companies' request for a status conference to discuss the proposed extension.

III.

Orders

THE COMMISSION ORDERS:

1. The HECO Companies' request for a second extension of time to file a fully executed term sheet for HBE's biomass energy project is denied.

2. The HECO Companies' request for a status conference is dismissed as moot.

DONE at Honolulu, Hawaii JAN 12 2009.

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By:



Carlito P. Caliboso, Chairman

By:



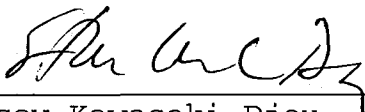
John E. Cole, Commissioner

By:



Leslie H. Kondo, Commissioner

APPROVED AS TO FORM:



Stacey Kawasaki Djou  
Commission Counsel

2008-0091.laa

CERTIFICATE OF SERVICE

The foregoing order was served on the date of filing by mail, postage prepaid, and properly addressed to the following parties:

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

DEAN MATSUURA  
MANAGER, REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

THOMAS W. WILLIAMS, JR., ESQ.  
PETER Y. KIKUTA, ESQ.  
DAMON L. SCHMIDT, ESQ.  
GOODSILL ANDERSON QUINN & STIFEL  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813

Counsel for HECO and HELCO